

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, <u>ex rel.</u> VEN-A-	)
CARE OF THE FLORIDA KEYS, INC., by and	)
through its principal officers and directors,	)
ZACHARY T. BENTLEY and T. MARK JONES,	) Civil Action
	) No. 05-11084-MEL
Plaintiff,	)
v.	)
	)
DEY, INC.; DEY L.P., INC. and DEY L.P.,	)
	)
Defendants.	)
	)
	)

**UNITED STATES' MOTION TO TRANSFER CASE TO MULTI-DISTRICT  
LITIGATION PROCEEDING NO. 1456**

The United States previously advised this Court that this matter may be considered related to a multidistrict litigation proceeding, In Re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456, now pending before United States District Judge Patti B. Saris in this District. Relator consents to this Motion. The United States now moves to transfer this matter to MDL No. 1456, for pre-trial proceedings. The defendants have indicated that they do not oppose transfer to the MDL proceeding before Judge Saris for the limited purpose of pre-trial proceedings, but Dey does not consent to a transfer to Judge Saris for trial.

The United States reserves the right to request at a later date that Judge Saris retain jurisdiction over this case for all purposes, including trial. However, at this point, the

United States is only seeking transfer for purposes of pre-trial proceedings. Defendants similarly reserve the right to challenge such a request by the United States.

In this case, plaintiffs allege that the defendants (hereinafter referred to as "Dey") violated the False Claims Act, 31 U.S.C. § 3729-33 ("FCA"), by inflating average wholesale prices ("AWPs") and other prices reported to price compendia relied upon by the Medicare and Medicaid programs in setting pharmaceutical reimbursement rates. Defendants have accepted service of the complaint filed by the government but have not answered, and stated they intend to move to dismiss the complaint pursuant to Rule 12, among other grounds. Their motion or responsive pleading is due December 22, 2006. Defendants have received, but have not yet responded to a Notice of Lawsuit and Request for Waiver of Service of Summons by Relator.

The cases pending before Judge Saris in MDL No. 1456, involve, inter alia, claims that "pharmaceutical defendants engaged in fraudulent marketing, sales and/or billing schemes by unlawfully inflating the average wholesale price of their Medicare covered prescription drugs in order to increase the sales of these drugs to health care professionals and thereby boost the pharmaceutical companies' profits." In re Immunex Corp. Average Wholesale Price Litigation, 201 F. Supp. 2d 1378, 1380 (J.P.M.L. 2002) (ruling of Judicial Panel on Multidistrict Litigation transferring cases to Judge Saris). In addition to Medicare claims, certain of the cases in the MDL also involve pricing fraud with respect to the Medicaid program. Dey is a defendant in various actions in MDL No. 1456,

including the lead case, Citizens For Consumer Justice, et al. v. Abbott Laboratories, Inc., et al., Civil Action No. 01-12257-PBS.

The United States also notes that it is now a plaintiff in another FCA case that was recently transferred to the District of Massachusetts and assigned to Judge Saris as part of MDL No. 1456. That case, captioned United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al., originated in the Southern District of Florida, involves the same relator, and makes allegations of Medicare and Medicaid fraud against Abbott similar to those made against Dey in this case. Judge Saris recently entered a scheduling order in that case, and the United States believes that discovery in that case and the instant matter should be coordinated as much as possible, particularly as to government witnesses.

Therefore, the United States believes it would be appropriate to transfer the instant matter to MDL No. 1456 for pre-trial purposes, and the defendants do not object to such a transfer. Relator consents to the Motion.

Respectfully submitted,

PETER D. KEISLER  
ASSISTANT ATTORNEY GENERAL

MICHAEL J. SULLIVAN  
UNITED STATES ATTORNEY

GEORGE B. HENDERSON, II  
Assistant U.S. Attorney  
United States Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3282

/s/ Laurie A. Oberembt  
MICHAEL F. HERTZ  
JOYCE R. BRANDA  
JUSTIN R. DRAYCOTT  
GEJAA T. GOBENA  
ANDY MAO  
LAURIE A. OBEREMBT  
JAMIE ANN YAVELBERG  
Civil Division  
Commercial Litigation Branch  
P. O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-3345

**CERTIFICATION**

The undersigned counsel certifies pursuant to LR 7.1(a)(2) that she has conferred with counsel for the Relator and the Defendants on the issue raised in this motion, and Relator consents and Dey does not oppose the motion.

/s/ Laurie A. Oberembt

Laurie A. Oberembt

Dated: November 20, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document and proposed Order were served, electronically and via first class mail, on this 20th day of November, 2006, upon the following counsel:

James J. Breen, Esq.  
Alison Warren Simon  
The Breen Law Firm, P.A.  
P.O. Box 297470  
Pembroke Pines, Florida 33029-7470

Jonathan Shapiro, Esq.  
Stern, Shapiro, Weissberg & Garin, LLP  
90 Canal Street  
Boston, MA 02114-2022

Paul F. Doyle, Esq.  
Kelley Drye & Warren LLP  
101 Park Ave.  
NY, NY 10178

Martin F. Murphy, Esq.  
Foley Hoag LLP  
Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210-2600

/s/ Laurie A. Oberembt

Laurie A. Oberembt